IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

NOTICE OF MOTION NO. 2516 OF 2004
IN
ARBITRATION PETITION (L) NO. 592 OF 2004

Union of India & ors. ... Petitioners

Vs.

M/s. Chandan Builders ... Respondents

Mr. S.R. Rajguru i/by T.C. Kaushik in support of
Notice of Motin.

Mr. V.P. Sawant for Respondents to show cause.

CORAM : S.U. KAMDAR,J.
DATED : NOVEMBER 24, 2004

P.C.

1. The present motion is taken out for condonation of delay of 383 days in filing arbitration petition challenging the award dated 7.7.1997.

2. Some of the few facts which are relevant for the purpose of determination of present notice of motion are briefly enumerated as under :

3. In view of the differences and disputes between the parties, the matter was referred to arbitration and on 7.7.1997 the award was passed by the Arbitrator. The arbitrator authorised the Engineer of the Petitioner to file an award in the court and in pursuance of the said authority on 1.10.1997 the Engineer has filed award in this court under Section 14(2) of the Arbitration Act, 1940.

4. In the meantime, Respondents being unaware of the fact that the said award has already been filed in court, moved an application under Section 14(2) of the Arbitration Act, 1940 being Arbitration Petition NO. 235 of 1997 inter alia seeking direction that the arbitrator should file award in this court. By order dated 22.12.1997 this court made the said petition absolute directing the arbitrator to file the award in this court. However, it seems that the Respondents thereafter did not move in the proceedings but on 7.8.2001 called upon the petitioner to file the award in this court and in response thereto the petitioner by their letter dated 21.8.2001 informed respondents that the award has already been filed some time in or about October, 1997. In view thereof, the respondents herein filed petition under Section 17 of the Arbitration Act, 1940 for the decree in terms of the award. The said petition being Arbitration Petition No. 182 of 2003 was ultimately decreed on 30.6.2003.

5. The said Arbitration Petition NO. 182 of 2003 was filed only against the Chief Engineer, Pune Zone and Shri. M.M.S. Nanda, the arbitrator. The Union of India was not added as party respondent to the said arbitration Petition NO. 182 of 2003. During the pendency of the Arbitration Petition No.

182 of 2003 it is the case of the Petitioner herein, that the Union of India was served with the notice of the hearing of the said petition on 20.4.203. On 5.6.2003 this court also issued letter to the Petitioner herein that the matter is fixed for hearing on 16.6.2003. The said letter which was received by the Petitioner on 16.6.2003 itself immediately thereafter the Petitioner approached this court and on enquiries found that the petition is already been disposed off on 30.6.2003 and decree has been passed making award rule of court. came to be passed. The Petitioner herein could not remain present in the said proceedings because notice dated 5.6.2003 was received on 16.6.2003 itself when the matter was fixed for hearing. Thereafter in Paragraph 11 of the affidavit in support, explanation is given that the matter was being considered with the Commander Works Engineer, Deolali and the office of the Central Government Advocates. In the meantime it seems that the aforesaid decree came to be passed. On 1st August, 2003 on the instructions of the Officers, notice of Motion was taken out being Notice of Motion No. 3770 of 2003 for setting aside exparte decree. By order and judgement dated 18.6.2004 the said decree has been set aside inter alia on the ground that the petition was defective in as much as the Union of India was not joined party respondent to the said petition.

6. On the said decree being set aside on 18.8.2004 the petitioner has taken out the present notice of Motion on 30.8.2004 for condonation of delay in filing the Arbitration Petition (L) No. 592 of 2004 which is lodged in this court on 30.8.2004. The said Petition is for setting aside the award passed by the Arbitrator. In view of the delay in filing the said petition, present notice of Motion has been taken out for condonation of delay under Section 5 of the Limitation Act, 1963.

7. The learned Counsel for the Petitioner in support of the notice of Motion has contended before me that there is sufficient cause for condonation of delay in view of the fact that the notice under Section 14(2) was never received from the office of the Prothonotary of filing of the Award in this court. It is their further case that they bona fide believed that the said notice will be received and the period of limitation would commence only after expiry of 30 days from the date of receipt of the notice. It is further contended before me by the learned counsel for the Petitioner that the petition for setting aside the Award was not filed because according to the Petitioner the same can be filed only after receipt of notice from Prothonotary & Senior Master of filing of Award in the court. However, it was admitted by the learned

counsel for the Petitioner that the Award was filed by the Officer of the Petitioner on 1.10.1997 under the direction of the Arbitrator. It is however, contended that the filing of the award by Officer cannot be considered to mean having notice of filing of the award as contemplated under Section 14(2). It is contended that the notice under Section 14(2) has to be served on the Union of India and therefore, such notice is required to be issued by Prothonotary & Senior Master pursuant to the filing of the award in this court on 1.10.1997. It is not disputed by the either parties before me that no such notice under Section 14(2) is issued.

. However, the learned counsel for the Respondents has vehemently contended that the petition filed by the petitioner challenging the award is hopelessly barred by law of limitation. It is further urged by the learned counsel for the Respondent that the delay is a substantial delay of 380 days and said delay ought not to be condoned by this court and the petition under Section 30 of the Arbitration Act, 1940 for challenging the award should not be allowed. The learned counsel for the Respondent contended that the period of limitation would commence on thirty days from the date of filing of the award and formal notice of filing of award is not necessary from the office of this Court. It has been therefore, contended that so called

explanation given by the Petitioner that they were waiting for notice to be served under Section 14(2) ought to be rejected and the motion should be dismissed and consequently the petition for setting aside the award also should be dismissed.

8. The learned counsel for the Respondent has also relied upon in the case of Apex Court in Food Corporation of India and Others Vs. E. Kuttappan (1993) 3 Supreme Court Cases 445 particularly paragraph 11 thereof and has contended that once there is knowledge of filing of award by the respondent then the period of limitation for filing petition challenging the Award under aCt 119 of Limittion Act must commence from that date itself. It has been also contended before me by the learned counsel for the Respondent that the filing of the award by the Officer attributes notice to the Union of India. On the aforesaid contention, the learned counsel for the Respondents have contended that the present notice of Motion should be dismissed with costs.

9. I have considered the arguments advanced by both the sides. I am of the opinion that even if contention is accepted of learned counsel for the Respondents that period of limitation of 30 days under Section 14(2) read with Article 119 commences from the date of knowledge of filing of the award,

still it will be required to be considered whether the condonation application should be granted or not by exercising the powers vested in this court under Section 5 of the Limitation Act. I am also of the further opinion that in the present case, the case made out by the Petitioner is sufficient cause for condonation of delay. In this case, it was bona fide belief of Union of India that notice will be served under Section 14(2) and under such bona fide belief, they did not file petition for challenging the award. Apart from that the question also arises whether the notice of filing of the Award through officer of the Union of India could automatically attribute knowledge to the Union of India of filing such an award. I am of the opinion tht explanation given by in the Union of India in an affidavit in support of motion that they were under a bona fide belief that notice under Section 14(2) is required to be served by this court and only thereafter the petition can be filed under Section 30 and 33 of the Arbitration Act, 1940 is required to be accepted. The second explanation furnished is that since the petition was filed for decree in terms of the award, they immediately took necessary steps firstly by getting the decree set aside which was obtained in Petition No. 182 of 2003 and secondly that some time has been taken in liaison with Central Government in the Ministry of Justice, Mumbai.

10. I am of the opinion that the aforesaid explanation furnished in support of the present notice of motion indicates sufficient cause and in view thereof I am of the opinion that motion should be made absolute.

. Accordingly Notice of Motion No. 2516 of 2004 is made absolute. Delay condoned. Petitioners are directed to get the petition numbered within the period of one week from today. The Petition to be placed for admission after one week thereafter. I also direct the Petitioner to pay cost of present motion to the Respondents quantified at the sum of Rs.2,500/-.

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(S.U. KAMDAR,J.)